

**CITY OF TAKOMA PARK, MARYLAND
PRESENTATION, SPECIAL SESSION & WORKSESSION
OF THE CITY COUNCIL
(Adopted May 23, 2005)**

Monday, April 18, 2005

PRESENT:

Mayor Porter
Councilmember Austin-Lane
Councilmember Barry
Councilmember Elrich
Councilmember Mizeur
Councilmember Seamens
Councilmember Williams

City Manager Matthews
Deputy City Clerk Carpenter
Community and Government Liaison Ludlow
Deputy Public Works Director Braithwaite
Police Chief Creamer

The City Council convened at 7:46 p.m. in the Council Chambers of the Municipal Building, 7500 Maple Avenue, Takoma Park, Maryland.

COUNCIL COMMENTS

Ms. Porter announced that the Council met in Executive Function Session before the Council meeting to continue the City Attorney's evaluation. The Council will hold another session next week on the same topic.

Ms. Austin-Lane recognized the showing of the episode of "Postcards from Buster" this past Saturday, which featured a family in Vermont with two moms. She thanked residents who helped get the event launched. Ms. Austin-Lane also noted that the judge ruled in the District of Columbia's favor in a recent court case involving DC's law on the rail transportation of hazardous materials. There will be an appeal. Ms. Austin-Lane requested that staff provide a time frame for completion of the Carroll Avenue Streetscape Project.

Mr. Williams noted the "Postcards from Buster" event. The Council Chambers was full. The copy shown on Saturday was the copy broadcast by a Houston TV station. The episode was okay in to show in Houston, but not okay in the Washington area.

Mr. Seamens requested a report on the status of 911 tracking to cell phones by the Police Department's dispatchers. In 2001, the FCC set a deadline for enhanced 911 system, to allow cell phones to be tracked by 911 systems across the country. This week, a fire was reported by cell phone. The location was unclear, and the Police Department was not able to identify the location of the calls. We recently purchased a new communication system. I would like to hear if additional equipment needs to be purchased, are there legal requirements?

Ms. Austin-Lane noted that Friends of Sligo Creek will be pulling invasive species from the park this Saturday at 10:00 a.m.

Mr. Barry requested that the City Manager call SHA about the intersection at New Hampshire Avenue and Sligo Creek Parkway. SHA has said they still cannot give a date certain for completion. The lights have been replaced, but they are not electrified.

PUBLIC COMMENTS

Seth Grimes, Willow Avenue, commented on his strong support for the Cedar/ Philadelphia crossing. He said he supports a crossing guard as well as safety improvements along the whole stretch of Philadelphia to the fire house. A safe walkable community should be a public priority.

Peter Banwell, Cedar Avenue, supported establishment of a crossing guard at Cedar and 410. I have been a heavy user of the crosswalk, for years. Unless the Police Department is out there all the time, the commuters are not going to learn. The Chief has raised concerns about crossing into the parking lot. The construction out there is temporary. OTRA, Safe Roadways, and the local PTAs all support this. You have an extra staff member who can assist with this. Have the Chief assign a guard to that area.

Otis Banwell, Cedar Avenue, said he is in seventh grade. My bus stops at Piney Branch Road. I don't have any trouble in the parking lot, but cannot cross 410 because no cars will stop for me. I have to get home soon and shouldn't have to walk far with my heavy backpack.

Margaret Cable, Piney Branch PTA, said you have a consensus among three principles, the SRC, and OTRA to address this problem immediately. Sgt Gilbert could tell you of his experience with pulling over 25 cars in an afternoon. I urge you to put the crossing guard there permanently.

Craig Ukel, Cedar Avenue, commended the Council for taking this seriously. You have to remember that this has gone on for 10 years, trying to get changes made to the crossing. No question that this is an accident waiting to happen. Cars drive too fast in that area and don't yield to pedestrians. It is possible to pass if you are coming toward the east. A crossing guard is needed at a minimum. You should employ a full-time crossing guard, or substitute guard, create temporary and permanent sidewalks, narrow Philadelphia Avenue, consider installing stop lights, and increase signage and markings.

Ellen Bell, Maple Avenue, said she walks with her children and a dog. There is a crosswalk there but we need better signage, or we need a stop sign. I urge Council to make it safer.

Suzanna Banwell, member of the Safe Roadways Committee, said she met with the Chief last Friday, along with OTRA, the PTAs, Larry Rubin and Joy Austin-Lane. Our objective was to come to consensus. The people who are so concerned are looking at you to work with the Chief to come up with an answer. The Chief said this was an illegal crosswalk. Ms. Ludlow said the state would be restriping. The City has been inviting children to crisscross the parking lot all

along, for Recreation Department programs. A solutions would be a temporary sidewalk in the parking lot and a sidewalk on the near side of Philadelphia. If the parking lot is unsafe for children, it is unsafe for many others as well. On the counting issue, we need to let people cross there and count them. We got the impression from the Chief that the numbers crossing there are sufficient to warrant a crossing guard. We have worked hard on this. Please resolve this issue. This one is easy. Let's work together to fix this.

Seth Grimes, Willow Avenue, commented that the Council met in executive session to conduct the attorney's performance evaluation. I got responses from Terry Seamens and Joy Austin Lane, saying they have no personal business with the firm. Doug Barry did not attend the sessions. He said he has business dealings with the firm. It is in the public interest to disclose your personal use of the firm.

Ms. Mizeur responded she has not. Mr. Elrich said he has used the firm once, more than five years ago. Mr. Williams responded that he used them once, more than 20 years ago. Ms. Porter said that she had not.

PRESENTATION

Mayor Porter reordered the agenda.

2. Presentation by Assistant Attorney General Jack Schwartz on the Open Meetings Act

Ms. Porter introduced Assistant Attorney General Jack Schwartz.

Mr. Schwartz provided a slide presentation (attached). The presentation has two objectives: 1) to determine the circumstances under which the Open Meetings Act applies; and 2) assuming it does apply, what do you have to do.

A public body is a multi-member entity (two or more). Any single official's meeting is not subject to the Act.

Mr. Williams asked, if the Council is the chief executive of the political subdivision, if the Mayor created a body and named two members from outside the body, would that be a public body subject to the Open Meetings Act?

Mr. Schwartz replied if the Council is the chief executive, creation of a body subject to the Open Meetings Act would have to be by a majority of the Council. If you act to create an entity, and the Council is the chief executive, then it would be a public body.

Mr. Elrich asked if a group of citizens invite a number of Councilmembers to sit on a "committee," is that a public body?

Mr. Schwartz said it probably would not be subject to the Act, if it wasn't created by the public

body.

Mr. Schwartz continued that the Act does not apply to private corporate boards. If a unit of government creates a corporation, it might then be subject to this law. Committees or subcommittees created by the public body by ordinance or resolution are covered by the Act.

The meeting of a public body must involve the convening of a quorum (majority of members, unless defined otherwise) for the consideration or transaction of public business (the entire process is covered). Social or political gatherings are not covered. A conference call could be covered under the Act. E-mail exchanges are not meetings because there's no convening of a quorum. The simultaneity is missing. A chat room, or instant messaging might be different. Emails are subject to the Public Information Act. When conducting site visits, where the members are traveling in the same vehicle, the time in the vehicle might be a meeting. The public may be entitled to have access.

There is no "blue jeans" exception to the Open Meetings Act. Some "retreats" may be subject to the Act, if they involve the consideration or transaction of public business..

If a joint meeting is held by two public bodies, both are responsible for compliance with this law. The law only applies to the public body and its meeting. If a citizens group invites the whole Council, for example, who are there as individuals, then that's not a Council meeting, it is the meeting of the other entity. The mere physical presence of a majority does not constitute a meeting.

Not every topic is covered by this law. Legislating or rule making, making new policy, consideration of contracts, budgets, licenses, and zoning, for example, are all subject to the Act. Executive functions, not covered by the Act, include administering existing law or policy. Budget preparation is an executive function during the preparation of a budget.

Mr. Elrich asked for clarification.

Mr. Schwartz said talking to department heads in the process of preparing the budget would not be covered. Once the formal process (of considering the budget) begins, is subject to the Open Meetings Act.

When performing executive functions, and the Act does not apply, then you do not have to follow Open Meetings Act requirements. Other laws may apply. To avoid headache of determining whether a meeting is an executive function, give public notice and have an open meeting.

In cases where the Act does apply, notice of all meetings is required, whether they are open or closed. Notice should be provided reasonably in advance. If some urgent issue came up, and a Council meeting is needed urgently, then the law does not prevent that. Last minute meetings are okay, if needed. The public body can't wait until the last minute to give notice of a public

meeting.

The minimal content for a notice of a meeting is the time, place, and whether it is open or closed. There is no requirement in State law to provide an agenda, although it is a good idea. You can change the agenda, at your will, if you voluntarily provide the agenda.

Written notice of the meeting is required (i.e. posting, at some place where people know where to look). Keep the notice for at least one year or longer if required by your document retention policy.

If you hold an open meeting, it must be accessible, in a reasonably sized room, and reasonably convenient for people who want to attend. You must figure out how to provide access for anyone who want to observe. The law gives people the right to observe. It does not give people the right to participate. The ground rules of comments is up to your discretion.

You can regulate how pictures or recordings are made of the meeting, but you can't prevent people from recording meetings if they want to.

The Open Meetings Act does not require disclosure of documents reviewed at a meeting. The Public Information Act may apply. This doesn't grant people the right to get documents.

In order to close a meeting, identify a specific exception to the Open Meetings Act. The vote to close a meeting must be taken in public. The presiding official is to prepare a written statement, noting the reason, citation, topics of discussion. Exceptions are to be construed narrowly. You have to stay within the exception during the discussion. For example, if closing a meeting to get legal advice, don't raise other topics.

There is an obligation to keep minutes, and a duty of timely preparation. The minutes should contain each item considered, what action was taken, if any, and the votes. Tape recordings do not substitute for minutes. The public should not be obliged to listen to tapes.

Closed meeting minutes should be sealed. The law requires a publicly available summary of what was considered, who was there, and what actions were taken.

Mr. Elrich asked for clarification about the summary of a closed meeting.

Mr. Schwartz said it depends. You should say enough for people to understand what went on. At the same time, you don't have to disclose what allowed you to go into closed session. You can say, for example, "considered an employee discipline matter, and determined to proceed." There is a tension between reporting and the desire for privacy.

Mr. Seamens commented that employee discipline seems like an executive function. He asked about review of performance of a contractor.

Mr. Schwartz said it may be a quasi-legislative function subject to the Act.

Mr. Barry asked if the Council creates a committee by ordinance, to advise us about matters, are they subject to the Open Meetings Act.

Mr. Schwartz replied that if you create the committee by ordinance, yes, the entity is a public body, and yes, advisory functions are subject to the act. Notice, open meeting, keeping and preparation of minutes are required.

Mr. Seamens asked if it is it acceptable to convene quorum in advance to vote to go into closed session?

Mr. Schwartz replied that the Compliance Board has said you can't vote one week to close a meeting the next week. You have to be able to hold those present at the meeting accountable for voting.

In response to other questions, Mr. Schwartz said his office tries to give general guidance to anyone who calls. At the same time we try to avoid addressing a specific set of facts that may turn into a complaint. We try to steer clear of giving an opinion about the facts. We serve as a resource for municipalities, without attempting to foreclose the Compliance Board taking a different view. The goal is to achieve compliance.

Mr. Elrich asked about "boilerplate" language in closed session meeting notices.

Mr. Schwartz replied that there is not clear cut answer to reconciling tension between disclosure in the summary and providing more information. It leads to an "I know it when it see it" situation. If you say you met to consult with your lawyer, then you should have told the public a little more. The Board is sympathetic that you cannot, for example, disclose details of property acquisition. There is good reason for the 14 circumstances allowable for closing a meeting.

Mr. Williams (referring to voting in advance) asked if we give notice of closing a meeting, and voted the week in advance, is the main reason not to vote in advance is that circumstances can change.

Mr. Schwartz replied that the Compliance Board has said it is no good to do this. The officials who are going to close the meeting need to be accountable to the public for closing the meeting. The public is entitled to observe immediately prior to the meeting closing. The public right's to object is diminished if the event occurs well before the closed meeting.

Seth Grimes, Willow Avenue, commented that he filed a complaint with the Open Meetings Compliance Board in December concerning the non publication of minutes. The Board found that the City violated the Act. He noted the Council's affirmation in its Feb. 2, 2005 letter and the goal to have the backlog of minutes completed in February of 2005. He noted that there are still outstanding minutes. It's important to act on the obligations you create for yourself.

1. Update on the Community Center Construction Project

Ms. Matthews provided a revised February 28 financial report, along with a report for March 31. The March 31 report reflects the recent funding from the State of Maryland. We were successful in getting \$350,000 in bond bill funding. I'll come back to the Council with further information on a community plaza level bid specification. On the current project, barring any change in the completion date, liquidated damages would go into effect May 1. We will be discussing with the contractor tomorrow whether those damages will include the computer learning center. The closing date for the bond will be May 25.

SPECIAL SESSION

3. Resolution re: Property Sale (8425 Piney Branch Road)

4. Resolution re: Property Sale (8435 Piney Branch Road)

Ms. Matthews indicated that the properties had been purchased by the City for the purpose of constructing a parking garage. When it became apparent that the property could not be developed for that purpose, the Council directed that the properties be sold. The resolutions will declare 8425 and 8435 Piney Branch Road as surplus properties so we can sell them. Mr. Elrich had expressed concern that the residential property remain residential. We still recommend a sealed bid process, but with a deed restriction for residential use. We discussed what would happen if we wanted to encourage redevelopment in that area. The City Council would have the discretion to lift that restriction in the future.

Mr. Elrich said I am still concerned that a competitive sealed bid may not be the best way to get the highest price.

Ms. Austin-Lane commented that we may be underestimating the expertise required to get the best price. We could approach realtors to see what percentage commission we could negotiate. We don't want to assume that doing this in-house is the best way.

Mr. Seamens said I share the concern about getting the best price.

Ms. Matthews said in her experience, all public property has been sold through competitive sealed bid. We did have an appraisal done of the property. If we don't feel that the bids are competitive, we can market the property. We can do whatever the Council is comfortable with.

Ms. Porter said we will schedule a closed session discussion when the bids come in

Ms. Matthews said the only way to consider matters other than price is to proceed with an RFP. We can set forth goals and take them into account when the proposals come in.

Mr. Seamens commented that when the sale was first supported by this Council, we were aiming

to cover a specific amount of funding shortfall. The cushion that we may have, would allow us to consider the commercial property use, using the property as a means of economic development.

Mr. Elrich said I hope that it would come in at a higher amount. The park improvements needed in my ward, the gym, and other items come to mind as a use for the funds if we get more for the properties than expected.

Motion by Elrich; second by Williams, to adopt the Resolution Declaring 8425 Piney Branch Road (residential property) as Surplus Property and Available for Sale.

Resolution 2005-30 was adopted (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Mizeur, Seamens, Williams).

**Resolution 2005-30
(Attached)**

Motion by Barry; second by Elrich, to adopt the Resolution Declaring 8435 Piney Branch Road (commercial property) as Surplus Property and Available for Sale.

Resolution 2005-31 was adopted (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Mizeur, Seamens, Williams).

**Resolution 2005-31
(Attached)**

Councilmembers indicated interest in reviewing the RFP.

5. 1st Reading Ordinance re: 7133 Carroll Avenue Renovation Contract

Motion by Austin-Lane; second by Barry.

Mr. Williams said I'm glad to see movement on this item. It is essential so this whole process of the fire station renovation can move forward. We don't want to provide any excuses for delay.

Ms. Austin-Lane commented that Daryl Braithwaite has worked diligently to keep things moving forward. Let us know if you hit any snags.

Ms. Porter said I appreciate Daryl's work.

Ordinance 2005-10 was accepted at first reading (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Mizeur, Seamens, Williams).

Ordinance 2005-10

(Attached)

BREAK

The Council recessed for a scheduled break at 9:42 p.m. and reconvened in Worksession at 9:56 p.m.

WORKSESSION

6. Additional Crossing Guard

Chief Creamer reported that she was here on April 4 to discuss the Safe Roadways Committee's recommendation for a crossing guard at Philadelphia and Cedar. Council directed that I put the seventh crossing guard there to redirect individuals crossing the street and to do a count. She reported the results.

Chief Creamer described SHA's plans for the area. They would consider narrowing the roadway by striping it as if it were a bumpout.

Ms. Ludlow commented that, after observation of the impact of the striping, they may decide to move the curb. They would use fairly bright white striping to help narrow the roadway. If you come down the hill, you don't see the intersection at Cedar or the parking lot, you do see wide pavement. The bumpout would give the illusion of a narrow road.

Council discussed options for creating a more safe environment at the intersection and in the Municipal Building parking lot. Council directed that a crossing guard be stationed at the intersection and that the Police provide increased traffic enforcement there. The situation will be reviewed again after SHA has made the promised improvements.

7. Committee on Montgomery College Community Issues

Jenny Wells, of Montgomery College, and Lorraine Pearsall and Francis Phipps were present for the discussion. Ms. Austin-Lane commented on the agreement reached on establishing the committee. The committee will be appointed by Council, with a maximum of seven members. The advisory committee will comply with the Open Meetings Act. By creating this committee, we will be formalizing a structure by which the neighbors can review the Montgomery College plans, and advise the Council.

The resolution will be scheduled for adoption next week.

ADJOURN

The Council adjourned for the evening at 11:07 p.m.